

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the proposed amendment)	NOTICE OF PUBLIC HEARING
of ARM 2.59.1401, 2.59.1406, 2.59.1409,)	ON PROPOSED AMENDMENT
2.59.1410, 2.59.1413, and 2.59.1417)	AND ADOPTION
pertaining to the regulation of title lenders)	
and the proposed adoption of NEW)	
RULES I through XII regarding)	
notification to the department, rescinded)	
loans, examinations, suspension, and)	
revocation of licenses, protection of)	
confidential borrower information,)	
department's cost of administrative)	
action, policy to implement limitations on)	
terms of credit to servicemembers and)	
dependents, examination fees, required)	
record keeping, accrual of interest,)	
unlicensed activity, and title loan)	
designation)	

TO: All Concerned Persons

1. On October 11, 2007, at 10:30 a.m., a public hearing will be held in Room 342 of the Park Avenue Building, 301 S. Park, Helena, Montana, to consider the proposed amendment and adoption of the above-stated rules.

2. The Department of Administration, Division of Banking and Financial Institutions, will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Division of Banking and Financial Institutions no later than 5:00 p.m. on October 5, 2007, to advise us of the nature of the accommodation that you need. Please contact Christopher Romano, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546; telephone (406) 841-2928; TDD (406) 444-1421; facsimile (406) 841-2930; e-mail to cromano@mt.gov.

3. The rules as proposed to be amended provide as follows, stricken matter interlined, new matter underlined:

2.59.1401 DEFINITIONS For the purposes of the Montana Title Loan Act and this subchapter, the following definitions apply:

(1) and (2) remain the same.

(3) ~~"Extension" means an agreement whereby the licensee agrees to extend the due date beyond the term of the original title loan without releasing the security interest on the titled property.~~

(4) remains the same, but is renumbered (3).

- (4) "Fraudulent or dishonest dealings" includes, but is not limited to:
(a) financial misconduct prohibited by statutes governing title lenders in this and other states and other segments of the financial services industry such as:
(i) securities brokerages;
(ii) banks and trust companies;
(iii) escrow offices;
(iv) title insurance companies; or
(v) other licensed or chartered financial institutions;
(b) civil actions or criminal offenses that involve deception, fraud, theft, misappropriation of funds, misrepresentation, omissions of material facts, unauthorized use of property, forgery, identity theft, or money laundering; and
(c) any other deceitful, false, or misleading representation or omission of material fact designed to be relied upon.
- (5) "Redemption date" is the maturity date of the original title loan and any subsequent renewals ~~or extensions~~.
- (6) "Renewal" means ~~extension~~ an agreement whereby the licensee agrees to extend the due date beyond the term of the original title loan without releasing the security interest on the titled property.
- (7) "Restitution" may include, but is not limited to, refunds of any or all the interest, fees, and principal paid by the borrower.
- (8) "Unencumbered title" or "clear title" means a valid certificate of title that has no liens or encumbrances attached.

AUTH: 31-1-802, MCA

IMP: 31-1-804, 31-1-810, 31-1-812, MCA

REASON: It is reasonably necessary for the division to propose sections (4), (7), and (8) to clarify terms identified in Senate Bill 74, which passed during the 2007 Regular Legislative Session. It is reasonably necessary to delete section (3) since all references to extensions were deleted as part of Senate Bill 74.

2.59.1406 EXAMINATION OF TITLE LENDERS (1) The department may ~~shall~~ conduct an examination of each title loan licensee's lending operations to ensure compliance with ~~both~~ applicable state and federal statutes and these administrative rules.

(2) The examination shall consist of a comprehensive review of the records, operations, and affairs of the licensee. The review shall include, but is not limited to, inquiry into:

- (a) through (b)(iii) remain the same.

AUTH: 31-1-802, MCA

IMP: 31-1-810, MCA

REASON: It is also reasonably necessary for the division to amend section (1) in order for its examination staff to verify compliance with any regulations that apply to title loan transactions. It is reasonably necessary for the division to amend

section (2) so that the division is not limited in its scope of information utilized in determining compliance with the Montana Title Loan Act.

2.59.1409 DURATION OF LOANS – INTEREST – EXTENSIONS (1) and (2) remain the same.

(3) On any loan containing an automatic 30-day renewal provision, at the time of each renewal licensees must provide, in person or by mail at the borrower's last known address, an updated truth in lending statement a statement disclosing the finance charges that will accrue with the renewal, the new maturity date of the loan, the amount financed, and the annual percentage rate (APR). Licensees may not collect interest on the renewal without proof of having provided the borrower such a statement.

(4) Interest may not compound from one ~~extension~~ or renewal to another.

(5) A licensee shall not extend or grant any additional credit other than that which was granted in the original title loan agreement without first requiring full payment of all principal and interest due on the original title loan, or any and all subsequent extensions renewals, and releasing the security interest in the titled property.

(6) remains the same.

(7) After a loan renewal, a licensee must wait 30 days from the date of the renewal before taking action against the collateral.

AUTH: 31-1-802, MCA

IMP: 31-1-816, MCA

REASON: It is reasonably necessary for the division to amend ARM 2.59.1409 to provide for consistency with Senate Bill 74 which passed during the 2007 Regular Legislative Session. This bill deleted all references to extensions, while replacing this term with "renewals." It is reasonably necessary to propose section (7) in order to protect the borrower's collateral since a title loan must have a term of 30 days pursuant to 31-1-816, MCA.

2.59.1410 ~~EXTENSIONS~~ RENEWALS - REDUCTION OF PRINCIPAL

(1) Subject to (2), beginning with the sixth extension and for each subsequent ~~extension~~ renewal, the borrower must pay at least 10% of the original principal amount along with all accrued interest before ~~an extension~~ renewal may be granted.

(2) and (2)(a) remain the same.

(b) reduce the amount of principal balance used to calculate interest by 10% every 30 days beginning 180 days from the beginning of the original title loan agreement. In such event, the licensee must comply with all the requirements of ARM 2.59.1409 for ~~extensions~~ renewals.

(3) Under no circumstances may a licensee charge interest or fees beyond the fifteenth ~~extension~~ renewal.

AUTH: 31-1-802, MCA

IMP: 31-1-816, MCA

REASON: It is reasonably necessary for the division to amend ARM 2.59.1410 to provide for consistency with Senate Bill 74 which passed during the 2007 Regular Legislative Session. This bill deleted all references to extensions, while replacing this term with "renewals."

2.59.1413 REPORTS (1) through (1)(b) remain the same.

(c) all officer questionnaires must be answered within ten days of the ~~end~~ start of any the examination.

AUTH: 31-1-802, MCA

IMP: 31-1-815, MCA

REASON: It is reasonably necessary for the division to amend ARM 2.59.1513 in order to ensure that the officer questionnaires are received in a timely manner so that the examination may be concluded and the final report written and issued to the licensee.

2.59.1417 PROCEDURAL RULES FOR HEARINGS AND DISCOVERY

(1) In the case of hearings concerning the issuance, suspension, revocation, or other enforcement actions pertaining to a licensee or any unlicensed entity or person, hearings and related discovery shall be conducted pursuant to the ~~done under the Montana Administrative Procedure Act implementing the revised~~ Attorney General's Model Rules effective June 4, 1999, which implement the Montana Administrative Procedure Act.

(2) remains the same.

AUTH: 31-1-802, MCA

IMP: 31-1-811, 31-1-812, MCA

REASON: It is reasonably necessary for the division to amend ARM 2.59.1417 in order to be consistent with the language provided in an amendment to 31-1-811, MCA. This amendment includes references to enforcement actions taken against unlicensed persons or entities. This amendment was passed as part of Senate Bill 74 during the 2007 Regular Legislative Session.

4. The proposed new rules provide as follows:

NEW RULE I NOTIFICATION TO THE DEPARTMENT (1) The licensee shall immediately notify the department of:

- (a) a change in the physical location of the office;
- (b) any change in the phone number of the business;
- (c) a change in the nature of the business;
- (d) a change in the board of directors or the principal officers;
- (e) a change in the share ownership of the company that could affect control;
- (f) the acquisition or disposition of another company;
- (g) any civil action involving fraud or dishonesty filed against the licensee;

- (h) any criminal charge filed against the licensee;
- (i) any change which would cause the department not to issue a license, if it had occurred before licensure; and
- (j) the addition of other business to be conducted at the location.

AUTH: 31-1-802, MCA

IMP: 31-1-805, MCA

REASON: It is reasonably necessary for the division to propose NEW RULE I to ensure that the information related changes in a licensee's ownership, business operations, contact information, and fitness and character are immediately reported to the division. This immediate reporting is reasonably necessary given that this information is critical to the daily operations and financial stability of a licensee.

NEW RULE II RESCINDED LOANS (1) The licensee shall keep separate records for all rescinded loans and retain those records according to records retention schedules as set by state or federal law, whichever is longer.

AUTH: 31-1-802, MCA

IMP: 31-1-815, 31-1-816, MCA

REASON: It is reasonably necessary for the division to propose NEW RULE II to verify that licensees provide borrowers the right to rescind their loan as provided by 31-1-816(2)(b)(ii), MCA. Title loan record retention requirements are set forth in 31-1-821, MCA. These requirements enable the division to determine whether a licensee is complying with all provisions of the Montana Title Loan Act.

NEW RULE III EXAMINATIONS (1) The department may examine any office, place of business, or location where records may be found of any licensee or person who may be in violation of Title 31, chapter 1, part 8, MCA, or these rules. The department shall examine for compliance with the applicable state and federal law and all rules adopted thereunder.

(2) At the end of an examination, the department shall provide the examinee with an oral and written report which details the areas examined and any deficiencies found.

AUTH: 31-1-802, MCA

IMP: 31-1-810, MCA

REASON: It is reasonably necessary for the division to propose NEW RULE III in order to clarify its authority and procedure in conducting examinations of licensed title lenders. This authority and discretion to conduct these examinations is specifically authorized under 31-1-810, MCA.

NEW RULE IV SUSPENSION AND REVOCATION OF LICENSES (1) The department may suspend or revoke a license of an entity that does not correct the

deficiencies found by the department after an examination within the time frame granted by the department.

AUTH: 31-1-802, MCA

IMP: 31-1-811, MCA

REASON: It is reasonably necessary for the division to propose NEW RULE IV to ensure that licensees comply with the findings set forth with an examination. It is reasonably necessary that the division suspend or revoke a license if a title lender does not take action to correct deficiencies identified in an examination. This authority has been provided by 31-1-811, MCA.

NEW RULE V PROTECTION OF CONFIDENTIAL BORROWER

INFORMATION (1) All licensees shall adopt, implement, and ensure compliance with guidance addressing safeguarding, proper destruction, and breach of confidential borrower information as required by:

(a) Title 30, chapter 14, part 17, MCA; and

(b) 16 CFR 314, as those rules were published in the May 23, 2002, Federal Register at 67 FR 36493 which are adopted and incorporated by reference. Copies are available from the Division of Banking and Financial Institutions, 301 South Park, P.O. Box 200546, Helena, MT 59620-0546.

(2) Any violation of this rule is grounds for fines, suspension, or revocation of license.

AUTH: 31-1-802, MCA

IMP: 31-1-821, MCA

REASON: It is reasonably necessary for the division to propose NEW RULE V in order to ensure that licensees safeguard customer information. This new rule will require licensees to properly dispose of this information so that a customer's personal information is not compromised. NEW RULE V affords greater protection to borrowers and sets forth that violation of this rule is grounds for enforcement action.

NEW RULE VI DEPARTMENT'S COST OF ADMINISTRATIVE ACTION

(1) The department may order reimbursement of its costs of bringing the administrative action which may include but are not limited to:

(a) examiner time charges;

(b) department legal counsel time charges;

(c) administrative law judge charges;

(d) court reporter costs;

(e) transcription fees;

(f) document preparation fees;

(g) other hearing costs; and

(h) transportation costs.

AUTH: 31-1-802, MCA

IMP: 31-1-811, MCA

REASON: It is reasonably necessary for the division to propose New Rule VI to clarify which types of costs may be reimbursed to the division in the course of bringing an administrative action against a title lender. This reimbursement was authorized by an amendment made to 31-1-811, MCA. This amendment was part of Senate Bill 74, which was passed during the 2007 Regular Legislative Session.

NEW RULE VII POLICY TO IMPLEMENT LIMITATIONS ON TERMS OF CREDIT TO SERVICEMEMBERS AND DEPENDENTS (1) All licensees shall implement a policy applying the provisions of the limitation of terms of credit to servicemembers and dependents as required by the John Warner National Defense Authorization Act for Fiscal Year 2007 Section 670, P.L. 109-364 which is adopted and incorporated by reference. Copies are available from the Division of Banking and Financial Institutions, 301 South Park, P.O. Box 200546, Helena, MT 59620-0546.

(2) Any credit agreement, promissory note, or other contract prohibited by the Act is void from the inception.

AUTH: 31-1-802, MCA

IMP: 31-1-802, MCA

REASON: It is reasonably necessary for the division to propose New Rule VII in order to verify that licensees are complying with the provisions of Defense Authorization Act, which will afford greater consumer protection to servicemembers and their dependents. This Act restricts fees that may be charged to servicemembers and their dependents by licensees.

NEW RULE VIII EXAMINATION FEES (1) If any examination fees are not paid within 30 days of the department's mailing of an invoice, the license of the deferred deposit lender may be suspended or revoked until the fees are paid.

AUTH: 31-1-802, MCA

IMP: 31-1-810, MCA

REASON: It is reasonably necessary for the division to propose New Rule VIII to ensure that a title loan licensee remits payment for examinations conducted by the division in a timely manner. The division is authorized to charge an examination fee to licensees pursuant to 31-1-810, MCA.

NEW RULE IX REQUIRED RECORD KEEPING (1) Each licensee shall keep the following records, accounts, and books for a minimum of 24 months from the date the loan agreement was signed by the borrower, or longer if required by federal law:

- (a) all loan documents signed by, or given to the borrower;
- (b) all loan application documents;

- (c) all records of payments made by the borrower, including the date and amount of the payment;
- (d) account files detailing the application of borrower payments to interest, principal, and other fees;
- (e) account files recording the accrual of interest updated every 30 days;
- (f) copies of loan renewal agreements and disclosures;
- (g) copies of paid loan agreements;
- (h) invoices for repossession, towing, and storage of vehicles;
- (i) written valuations of repossessed vehicles; and
- (j) bills of sale of repossessed vehicles.

AUTH: 31-1-802, MCA

IMP: 31-1-815, MCA

REASON: It is reasonably necessary that the division to propose NEW RULE IX in order to verify compliance with the record keeping requirements set forth by 31-1-805, MCA. These records must be available to the division's examination staff in order to ensure that the transactions also comply with all provision of the Montana Title Loan Act.

NEW RULE X ACCRUAL OF INTEREST (1) Borrowers must be given the option to pay interest as it accrues or at the end of each 30-day renewal.

(2) Interest may not be collected before it accrues.

(3) Licensees shall apply payments to interest and principal in the following order:

- (a) first, to interest accrued and outstanding from the original loan and subsequent renewals;
- (b) second, to interest accrued to date for the current month (per diem);
- (c) third, to principal.

AUTH: 31-1-802, MCA

IMP: 31-1-802, MCA

REASON: It is reasonably necessary for the division to propose NEW RULE X in order to clarify how borrower payments should be applied to the accrued interest on their loan. This new rule also protects borrowers from paying interest before it accrues.

NEW RULE XI UNLICENSED ACTIVITY (1) Unlicensed activity includes, but is not limited to, the following:

- (a) making title loans without a license;
- (b) levying, collecting, or attempting to collect, charges in excess of the statutory rate or the contracted rate if it is less than the statutory rate;
- (c) applying payments to interest, which should properly be applied to principal;
- (d) failing to make the interest rate reductions after the sixth renewal as required by statute;

- (e) failing to make disclosures required by the federal Truth in Lending Act (15 USC 1601, et seq.) or Title 31, chapter 1, part 8, MCA, and these rules; and
- (f) the collection of interest prior to its accrual.

AUTH: 31-1-802, MCA

IMP: 31-1-804, MCA

REASON: It is reasonably necessary for the division to propose NEW RULE XI in order to clarify which title lending activities constitute unlicensed activity.

NEW RULE XII TITLE LOAN DESIGNATION (1) The department designates that a title loan is a loan:

- (a) the annual percentage rate (APR) of which exceeds 35%;
- (b) that is not used to transfer or purchase property; and
- (c) that includes fewer than 12 installments.

AUTH: 31-1-802, MCA

IMP: 31-1-803, MCA

REASON: It is reasonably necessary for the division to propose NEW RULE XII to ensure that title loans are subject to the provisions of the Montana Title Loan Act. The authority to designate a title loan was specifically provided for in an amendment to 31-1-803(8), MCA, which was part of Senate Bill 74.

5. Concerned persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Kelly O'Sullivan, Legal Counsel, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546; faxed to the office at (406) 841-2930; e-mailed to kosullivan@mt.gov, and must be received no later than October 19, 2007.

6. Kelly O'Sullivan, Legal Counsel, Division of Banking and Financial Institutions, has been designated to preside over and conduct the hearing.

7. An electronic copy of this Proposal Notice is available through the Department of Administration's web site at <http://doa.mt.gov/AdministrativeRules.asp>. The department strives to make the electronic copy of the notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the department works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

8. The Division of Banking and Financial Institutions maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by

this division. Persons who wish to have their name added to the mailing list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding division rulemaking actions. Such written requests may be mailed or delivered to Christopher Romano, Division of Banking and Financial Institutions, 301 S. Park, Ste. 316, P.O. Box 200546, Helena, Montana 59620-0546; faxed to the office at (406) 841-2930; e-mailed to cromano@mt.gov; or may be made by completing a request form at any rules hearing held by the Division of Banking and Financial Institutions.

9. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled. Senator Larry Jent, the primary bill sponsor of SB 74 (2007), was notified on July 27, 2007, by regular mail.

By: /s/ Janet R. Kelly
Janet R. Kelly, Director
Department of Administration

By: /s/ Dal Smilie
Dal Smilie, Rule Reviewer
Department of Administration

Certified to the Secretary of State September 10, 2007.